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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/038,894	03/11/1998	ROLAND STOUGHTON	24730-2202	8909

24961 7590 07/26/2002

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EXAMINER

MELLER, MICHAEL V

ART UNIT	PAPER NUMBER
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1651

DATE MAILED: 07/26/2002

32

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application N .

09/038,894

Applicant(s)

STOUGHTON ET AL.

Examin r

Michael V. Meller

Art Unit

1651

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 July 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 10-18,32-36,38,41 and 42 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 10-18,32-36,38,41 and 42 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) ✓
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

The restriction requirement is withdrawn in view of applicant's arguments and the election of species of record is maintained.

The election of species applies to all of the pending claims, claims 10-18, 32-36, 38, 41 and 42.

The election of species of record is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 10-18, 32-36, 38, 41 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Okada et al., The Journal of International Medical Research, 1991, 19:234-36 (Okada 1), Okada et al., The International Journal of International Medical Research, 1991, 19:348-50 (Okada 2), Yanamoto et al., or Yonekura et al. (all of these

primary references are of record) in view of Gibboni et al. (see abstract, cols. 1-2, the examples), Pick et al. (see abstract, pages 162, 163, 165, 169-170), Babcock et al. (see col. 3), and Brunck et al. (col. 1-2).

Okada et al., *The Journal of International Medical Research*, 1991, 19:234-36 (Okada 1), Okada et al., *The International Journal of International Medical Research*, 1991, 19:348-50 (Okada 2), Yanamoto et al., and Yonekura et al. all teach administering the elected compound, futhan, to a patient. They do not teach assessing, cell activation.

~~Gibboni~~ and Pick both teach that assays using phenol red are well known to be used for the measurement of hydrogen peroxide produced by cells in culture (free radical production). Gibboni specifically states that such assays are useful for patients to check their cholesterol or glucose levels.

Babcock teaches that traumas can be treated by administering compounds which scavage free radicals.

Brunck teaches that trauma such as pancreatitis is known to be treated by futhan (the elected compound).

or the doctors would check them normally.
Since such patients would normally check their glucose levels they would be motivated to ~~do~~ treat their glucose overproduction if the levels were too high. Thus, someone who had a trauma (elected condition) would want to know before that condition was treated (if it needed to be treated) by futhan whether or not free radical production had occurred and that would have been clearly within the purview of the skilled artisan to administer the phenol red assay first to detect the free radical

production, thus if elevated, indicating that treatment for the trauma would need to be performed and such treatment would be the administration of futhan to the patient.

Further, if someone has a trauma such as pancreatitis, and since pancreatitis is well known to be treated by futhan, it would have been well within the purview of the skilled artisan to treat a trauma with futhan and to assess the treatment to see if it was necessary by using the phenol red since it is well known that phenol red assays are used to detected free radical production and that traumas are treated by compounds such as futhan and further that traumas are treated by compounds that scavage free radicals.

Thus, since traumas are treated with futhan and traumas produce free radicals, it would have been obvious to use a compound like futhan after the detection of elevated free radical production, to treat that patient with futhan in an effort to reduce the free radical production.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael V. Meller whose telephone number is 703-308-4230. The examiner can normally be reached on Monday thru Friday: 9:00am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Wityshyn can be reached on 703-308-4743. The fax phone numbers for the organization where this application or proceeding is assigned are 703-

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308-0294 for regular communications and 703-308-0294 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0196.



Michael V. Meller
Examiner
Art Unit 1651

MVM
July 17, 2002